



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Sprint International/Telenet Communications  
Company

**File:** B-240417

**Date:** September 4, 1990

George J. Affe, Esq., for the protester.  
Harry L. Carey, Esq., Department of Housing and Urban  
Development, for the agency.  
Scott H. Riback, Esq., and Andrew T. Pogany, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

### DIGEST

Protest challenging the propriety of a subcontract  
acquisition by a government prime contractor is dismissed  
where the prime contractor is not acting as the government's  
agent and the award is not made "by or for the government."

### DECISION

Sprint International/Telenet Communications Company protests  
the evaluation of proposals and award of a subcontract to BT  
Tymnet, Inc. by Data Prompt, Inc., the prime contractor  
under Department of Housing and Urban Development (HUD)  
contract Nos. HC-14877 and HC-14488. We dismiss the protest  
since this subcontractor protest is not for consideration  
under our Bid Protest Regulations, 4 C.F.R. § 21.3(m)(10)  
(1990).

The two Data Prompt contracts are for the provision, on an  
indefinite quantity basis, of automated interactive  
financial management and accounting systems to support HUD's  
portfolio of HUD-owned and mortgagee-in-possession  
properties. Pursuant to those contracts, Data Prompt, among  
other things, is required to provide a nationwide system  
which allows HUD's field and headquarters offices access to  
a variety of financial and accounting data. In essence,  
Data Prompt is required under the contracts to make  
information generated by the firm available to HUD offices  
at HUD-supplied computer terminals, with Data Prompt  
retaining responsibility for the provision of a  
telecommunications network.

049365/142151

Due to a variety of problems relating to the interface of Data Prompt and HUD software, however, Data Prompt was unable initially to fulfill its obligation under the contracts to provide the necessary telecommunications network. Consequently, Data Prompt decided to subcontract the requirement and issued a request for proposals (RFP) on September 15, 1989. The RFP was issued after Data Prompt sought and received HUD commentary and concurrence on its various terms and provisions.

After receiving and evaluating the proposals submitted under the RFP, Data Prompt concluded that an award to Sprint would best meet the overall requirements for a telecommunications network as required under the prime contracts. It therefore forwarded the proposals of Sprint and BT Tymnet to HUD in order to obtain the contracting officer's consent to enter into a subcontract with Sprint.<sup>1/</sup> The agency then evaluated both proposals to determine whether each firm's offer complied with HUD's requirements in terms of computer compatibility. After examining both proposals, HUD requested Data Prompt to seek clarification of certain aspects of BT Tymnet's proposal which seemed inconsistent with HUD's requirements in terms of computer compatibility. After seeking the clarification, Data Prompt then requested the contracting officer's consent to enter into a subcontract with BT Tymnet rather than Sprint on grounds that the Tymnet proposal appeared to better meet the overall requirements for the telecommunications network. The contracting officer provided Data Prompt with the required consent and on July 3, 1990, Data Prompt entered into a subcontract with BT Tymnet. This protest followed.

We will not consider this protest because it involves allegations concerning the propriety of a subcontracting effort by a government prime contractor. Under the Competition in Contracting Act of 1984, 31 U.S.C. § 3551(1) (1988), our Office has jurisdiction to decide protests involving contract solicitations and awards by federal agencies. We have interpreted this provision as authorizing us to decide protests of subcontract solicitations and awards only when the subcontract is "by or for the government." 4 C.F.R. § 21.3(m)(10).

---

<sup>1/</sup> By the terms of its two prime contracts, Data Prompt is required to obtain the contracting officer's consent before entering into any subcontract in excess of a certain specified dollar value. See Federal Acquisition Regulation (FAR) § 52.244-1 (FAC 84-23).

A subcontract is considered to be "by or for the government" where the prime contractor principally provides large-scale management services to the government and, as a result, generally has ongoing purchasing responsibility. SRI Int'l, B-237779, Mar. 22, 1990, 90-1 CPD ¶ 318. Such circumstances exist where the prime contractor operates and manages a government facility, otherwise provides large scale management services in a government facility, serves as an agency's construction manager, or functions primarily to handle the administrative procedures of subcontracting with vendors effectively selected by the agency. Id. Except in these limited circumstances in which the prime contractor is basically acting as the government's agent, a subcontract awarded by a government contractor in the course of performing a prime contract generally is not considered "by or for the government." ToxCo, Inc., 68 Comp. Gen. 635 (1989), 89-2 CPD ¶ 170.

Here, Data Prompt, while receiving the agency's assistance in the preparation of its RFP and obtaining the agency's consent to enter into the subcontract, retained primary responsibility for the overall conduct of the acquisition. See Toxco, Inc., supra (active involvement of government official in the conduct of acquisition and ultimate source selection did not result in prime contractor becoming "mere conduit" for agency acquisition). In this regard, HUD's involvement in the subject acquisition was limited to a determination of whether the telecommunications networks offered were compatible with the agency's computer system. This is not enough for our Office to assume jurisdiction, see Perkin-Elmer Corp., Metro Division, B-237076, Dec. 28, 1989, 89-2 CPD ¶ 604, since the record simply does not support the view that the agency effectively "took over" the procurement from the prime contractor. Id. Additionally, Data Prompt engaged in this particular acquisition not for the purposes of providing a service which, standing alone, HUD desired to acquire. Rather, Data prompt conducted the procurement for the purpose of fulfilling its larger overall obligation under the prime contracts. Under these circumstances, we decline to take jurisdiction in this case.

The protest is dismissed.



Michael R. Golden  
Assistant General Counsel